

**State of Arizona Department of Economic Security
Primary Review
Title IV-E Foster Care Eligibility
Report of Findings for
April 1, 2009 – September 30, 2009**

Introduction

During the week of March 22, 2010, the Children's Bureau (CB) of the Administration for Children and Families (ACF) conducted a primary review of the State's title IV-E foster care program. The review was conducted in collaboration with the State of Arizona's Department of Economic Security (DES) and was completed by a review team comprised of representatives from the State agency's Division of Children, Youth and Families (DCYF), the State court improvement project, the State Administrative Office of the Courts, CB Central and Regional Offices, ACF Regional Grants Management and peer reviewers.

The purposes of the title IV-E foster care eligibility review were (1) to determine whether Arizona's DES title IV-E foster care program was in compliance with the eligibility requirements as outlined in 45 CFR §1356.71 and §472 of the Social Security Act (the Act); and (2) to validate the basis of the State's financial claims to ensure that appropriate payments were made on behalf of eligible children.

Scope of the Review

The primary review encompassed a sample of the State's foster care cases that received a title IV-E maintenance payment during the six-month period under review (PUR) of April 1, 2009 through September 30, 2009. A computerized statistical sample of 100 cases (80 cases plus 20 oversample cases) was drawn from State data submitted to the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the above period. Eighty (80) cases were reviewed from the original sample.

In accordance with Federal provisions at 45 CFR 1356.71, the State was reviewed against the requirements of title IV-E of the Act and Federal regulations regarding:

- Judicial determinations regarding reasonable efforts and contrary to the welfare as set forth in §472(a)(2)(A) of the Act and 45 CFR §§1356.21(b)(1) and (2), and (c), respectively;

- Voluntary placement agreements as set forth in §§472(a)(2)(A) and (d)-(g) of the Act and 45 CFR §1356.22;
- Responsibility for placement and care vested with State agency as stipulated in §472(a)(2)(B) of the Act and 45 CFR §1356.71(d)(1)(iii);
- Eligibility for Aid to Families with Dependent Children (AFDC) under the State plan in effect July 16, 1996 as required by §472(a)(3) of the Act and 45 CFR §1356.71(d)(1)(v);
- Placement in a licensed foster family home or childcare institution as defined in §§472(b) and (c) of the Act and 45 CFR §1355.20(a); and
- Safety requirements for the child's foster care placement as required at 45 CFR §1356.30.

The case file of each child in the selected sample was reviewed to verify title IV-E eligibility. The foster care provider's file also was examined to ensure that the foster family home or child-care institution where the child was placed during the PUR was licensed or approved and that safety requirements were appropriately documented. Payments made on behalf of each child also were reviewed to verify the expenditures were allowable under title IV-E and to identify underpayments that were eligible for claiming. A sample case was assigned an error rating when the child was not eligible on the date of activity in the PUR for which title IV-E maintenance was paid. A sample case was cited as non-error with ineligible payment when the child was not eligible on the activity date outside the PUR or the child was eligible in the PUR on the service date of an unallowable activity and title IV-E maintenance was paid for the unallowable activity. In addition, underpayments were identified for a sample case when an allowable title IV-E maintenance payment was not claimed by the State for an eligible child during the 2-year filing period specified in 45 CFR §95.7, unless the title IV-E agency elected not to claim the payment or the filing period had expired. CB and the State agreed that the State would have two weeks following the onsite review to submit additional documentation for a case that during the onsite review was identified as being in undetermined status. Based on the supplemental documentation, the undetermined status of sample case 52 was determined to be a non-error case.

Compliance Finding

The review team determined that 77 of the 80 cases met eligibility requirements (i.e., were deemed non-error cases) for the PUR. Three (3) cases were determined to be in error for either part or all of the PUR and five (5) non-error cases were ineligible for Federal funding for a period of claiming. Accordingly, Federal funds claimed for title IV-E foster care maintenance payments, including related administrative costs associated with the error cases and non-error cases with ineligible payments, are being disallowed. Because the number of cases in error is fewer than four (4), The Department of Economic Security is in substantial compliance for the PUR.

Case Summary

The following charts record the error cases; non-error cases with ineligible payments; underpayments; reasons for the improper payments; improper payment amounts; and Federal provisions for which the State did not meet the compliance mandates.

Error Cases

| Sample Number | Improper Payment Reason & Ineligibility Period | Improper Payments (FFP) |
|---------------|---|-------------------------------------|
| 35 | The judicial determination of contrary to the welfare requirement was not met. [§472(a)(2)(A) of the Act; 45 CFR §§1356.21 (c)] Ineligible: 05/23/2006-11/21/2009 | \$9,112.44 Maint. \$8,237 Admin. |
| 48 | A valid removal did not occur. Physical removal was not sanctioned by a removal court order or voluntary placement agreement. The child remained in an out-of-home placement for more than 5 days before being released to the grandparent. [§472(a)(2)(A) of the Act; 45 CFR §§1356.21(b), (c) and 1356.22] Ineligible: 08/21/2009-08/26/2009 | \$88.92 Maint. |
| 78 | A title IV-E foster care maintenance payment was made for a child placed with an unlicensed relative care provider. [§472(a) and (c) of the Act; 45 CFR §§1356.71(d)(1)(iv) and 1355.20] Ineligible: 05/18/2009-05/18/2009 | \$108.60 Maint. |

Total Maint.: \$9309.96

Total Admin.: \$8237.00

Non-error Cases with Ineligible Payments

| Sample Number | Improper Payment Reason & Ineligibility Period | Improper Payments (FFP) |
|---------------|---|-------------------------|
| 17 | Title IV-E foster care maintenance payments were made prior to the judicial determination of contrary to the welfare being made. [§§472(a)(2)(A) and 475(4) of the Act; 45 CFR 1356.21(c)] Ineligible: 04/28/2008-04/30/2008 | \$54.08 Maint. |
| 29 | Overpayment was made, according to the State established rates of payment. [§475(4) of the Act] Ineligible: 07/01/2009-10/01/2009 | \$7.24 Maint. . |
| 32 | Title IV-E foster care maintenance payments were made prior to the judicial determination of contrary to the welfare being made. [§§472(a)(2)(A) and 475(4) of the Act; 45 CFR 1356.21(c)] Ineligible: 10/29/2003-10/31/2003 | \$107.67 Maint. |

| | | |
|----|---|----------------------|
| 43 | Title IV-E foster care maintenance payment were made for a child placed with an unlicensed foster care provider. [§472(a) and (c) of the Act; 45 CFR §§1356.1356.71(d)(1)(iv) and 1355.20] Ineligible: 02/28/2007-02/28/2007 | \$100.69 Maint. . |
| 44 | Title IV-E foster care maintenance payments were made prior to the judicial determination of contrary to the welfare being made. [§§472(a)(2)(A) and 475(4) of the Act; 45 CFR 1356.21(c)] Ineligible: 08/27/2004-08/31/2004 | \$358.49 Maint. |

Total Maint.: \$628.17

Areas in Need of Improvement

The findings of this review indicate that the State needs to further develop and implement procedures to improve program performance in the following areas. For each issue, there is a discussion of the nature of the area needing improvement, the specific title IV-E requirement to which it relates, and the corrective action the State should undertake.

Issue #1: *Removal from Home*

- a) *Lack of Judicial Determination of Contrary to the Welfare.* Sample case 35 was found to be in error because the required contrary to the welfare finding was not made in the first court order regarding the removal. Subsequent to the child's removal from the home on 05/23/06, a court hearing was held on 06/12/06 which revoked the in-home intervention dependency order and continued the child in State custody. The court order from this proceeding stated, "It is ordered pursuant to 8-892 rescinding the order establishing the in-home intervention and vacating the stay of the dependency." The order further stated, "It is ordered continuing the children as temporary wards of the Court, committed to the temporary care, custody, and control of the Arizona Department of Economic Security." This court order is considered the first judicial order that sanctioned the child's removal from home and placement in foster care. However, it does not contain the requisite judicial finding regarding whether it was contrary to the child's welfare to remain in the home or that removal from the home was in the child's best interests. A transcript from the 06/12/2006 court hearing was not provided by the agency as an alternative to the court order to document compliance with the judicial requirement.
- b) *Lack of Valid Removal.* In sample case 48, the agency placed the child in a foster care setting on 08/21/09 and five days later (on 08/26/2009) released the child to the paternal grandmother. The agency was not able to document that the 08/21/09 removal and foster care placement was authorized by a court order or voluntary placement agreement and that the agency had authority for the placement and care of the child at removal. Therefore, the removal was not considered valid under title IV-E.

Title IV-E Requirement: The title IV-E statutes at §472(a)(2)(A) of the Act, as a prerequisite for Federal reimbursement on behalf of an otherwise eligible child, require that the child's physical or constructive removal be in accordance with either 1) a judicial determination to the effect that continuation in the home from which legally removed would be contrary to the welfare of the child and that reasonable efforts to prevent the removal were made; or 2) a voluntary placement agreement entered into with the title IV-E agency by a parent or legal guardian of the child. If the child's removal is through a court order and the removal took place on or after March 27, 2000, the "contrary to the welfare" determination must be made in the first court ruling that sanctions the removal of the child from the home. Documentation of the judicial findings can be through either a written court order or a transcript of the court proceeding. If the Federal requirements regarding the child's removal and placement in foster care are not met as specified in Federal statute, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

Recommended Corrective Action: The State should continue to work closely with the Court Improvement Program to train the judiciary and other court officials to correct delays in judicial findings and to implement procedures that ensure court orders reflect title IV-E criteria on legal authority, contrary to the welfare, best interests, and reasonable efforts in dependency orders of children for whom title IV-E payments are claimed. The accuracy of title IV-E eligibility determinations can be increased through these measures and training of agency staff. Staff training will facilitate workers' understanding of State and Federal criteria for removals; ensure eligibility decisions are based on the elements needed for compliance; and eliminate the authorization of payments prior to establishing compliance with the requirements.

Issue #2: *Unlicensed foster care provider.* In one (1) error case (sample 78) and one (1) non-error case (sample 43), foster care maintenance payments were made for a child placed with an unlicensed provider. In both cases, the State claimed title IV-E prior to the relative caregiver becoming fully licensed as a foster family home. The State agency must document that the child's foster care placement is licensed or approved in order for the child to be eligible under title IV-E.

Title IV-E Requirement: Federal provisions at §472(b) and (c) of the Act and 45 CFR §1356.71(d)(1)(iv) and 1355.20 permit Federal financial participation (FFP) for the costs of foster care maintenance for otherwise eligible children placed in licensed or approved foster family homes or childcare institutions. It is required that the child's foster care setting be fully licensed or approved in accordance with the State's licensing standards. For the title IV-E eligibility review, the State must provide sufficient information to support FFP for a child's foster care placement during the PUR.

Recommended Corrective Action: The State should continue to develop and implement procedures to ensure that each foster care provider is fully licensed prior to claiming title IV-E foster care maintenance payments for a child's placement. The State should continue to develop its payment system with attention given to alerts for placement changes or other changes in the child's circumstances that would affect the child's eligibility for title IV-E. As stated above, staff training will help to ensure that workers make eligibility decisions based

on the elements needed for compliance and to eliminate the authorization of payments prior to establishing compliance with the requirements.

Issue #3: Additional Unallowable Payments. Three (3) non-error cases (samples 17, 32 and 44) were identified with ineligible payments because FFP was claimed prior to the judicial finding of contrary to the welfare. Each child was placed in foster care within the last few days of the month but the “contrary to the welfare” judicial determination was made in the subsequent month. In addition to these ineligible payments, in sample 29, the State claimed FFP for an amount that exceeded the State’s established payment rate.

Title IV-E Requirement: Federal regulations at 45 CFR §1356.60 provide that title IV-E foster care maintenance assistance payments may be claimed only for allowable costs of expenditures that are covered by the Federal definition of foster care maintenance found at §475(4) of the Act. Under §472 of the Act, title IV-E maintenance payments may be claimed from the first day of placement in the month in which all title IV-E eligibility criteria are met, but not before all eligibility criteria are met. To qualify for FFP, the State must document that foster care maintenance payments claimed for title IV-E reimbursement are for allowable expenditures in accordance with the statutory definition, are for eligible children, are in amounts conforming to the State rates of payment for the type and level of care provided, and are for non-duplicative costs of daily maintenance.

Recommended Corrective Action: In addition to the training recommended above, the new enhancements being developed for the State’s automated system should include a quality assurance module to periodically review and track payments for accuracy and compliance with Federal requirements and State standards.

Issue #4: Underpayments. The State often places otherwise title IV-E eligible children in the homes of unlicensed relatives who are not yet fully licensed and uses State or another funding source other than title IV-E. Once the relative becomes fully licensed in accordance with the State’s standards, the State begins claiming title IV-E funds on the date the home is fully approvable although the child has been in the placement for the entire month and all other title IV-E eligibility criteria are met. FFP may begin on the first day of the month in which full compliance with the State’s licensing standards is met.

Title IV-E requirements: FFP may not begin until the first day of the month in which full compliance with the State’s licensing standards is met. The State may claim FFP for the entire month when an otherwise eligible child has resided in that home for the entire month. Federal provisions at §472(b) and (c) of the Act and 45 CFR §1356.71(d)(2) and (g)(iv) and 1355.20.

Recommended Corrective Action: Currently, the State converts to title IV-E funding for eligible children on the actual date the home is fully-licensed. State staff will investigate whether this is a practice issue or programming issue of the State Automated Child Welfare Information System (SACWIS) known as CHILDS. This detail prevents State staff from manually correcting the funding code in these cases. As recommended above, an automated quality assurance module to periodically review and track payments for accuracy and compliance with Federal requirements and State standards should be developed.

Strengths and Promising Practices

The following positive practices and processes of the title IV-E foster care eligibility program were observed during the review. These approaches seem to have led to improved program performance and successful program operations.

Finalization of Permanency Plan Reviewed In Additional Hearings:

There was evidence of joint training and collaboration between the child welfare agency and the court agencies in the court orders. Reasonable efforts to finalize the permanency plan findings typically occur in both the Permanency and Report & Review Hearings. The practice in the Permanency Hearing is held annually, and the Report & Review Hearing is held usually every six months. Language was clear, concise and child-specific in court orders that contained more narrative usage than checkboxes, which yielded more child- and case-specific information. In many orders, the permanency plan was clearly identified and concurrent planning was often integrated. As a result, reasonable efforts to finalize the permanency plan determinations were always timely and reviewers found most cases to have determinations every six months. This practice ensures that the State will meet the requirements in §472(a)(2)(A)(ii) of the Act and 45 CFR 1356.21 (b) (2) for the State agency to obtain judicial determinations within twelve (12) months of the child's entry into foster care that the agency has made reasonable efforts to finalize the permanency plan that is in effect with subsequent determinations every 12 months.

However, the State should continue its efforts to strengthen program performance and standardize training with the court agencies since there were error cases that lacked the requisite judicial findings of contrary to the welfare in the first order.

Centralized Eligibility Unit:

The State has strengthened the practices of its centralized eligibility unit by implementing procedures around eligibility determinations, constructive removals, and documentation requirements for proof of relationship. Recent revisions of the SACWIS system have encouraged enhanced usage for the eligibility unit as it relates to determinations of title IV-E eligibility through updates to increase the operating speed of the mainframe system and programming which allows workers to pull staff-specific redetermination date reports.

It also permits more accurate and consistent application of policy, as well as timely issue and emerging trend identification and problem solving. CB has found that the work of the centralized eligibility unit has been a key component in enhancing the development and availability of documentation supporting title IV-E eligibility. It appears these efforts were instrumental in reducing the number and proportion of title IV-E claims for cases not documented as meeting the eligibility criteria.

Disallowances

A disallowance in the amount of \$9,309.96 in maintenance payments and \$ 8,237.00 in related administrative costs of FFP is assessed for title IV-E foster care payments claimed for the error cases. Additional amounts of \$628.17 in maintenance payments of FFP are disallowed for title IV-E foster care payments claimed improperly for the non-error cases. The total disallowance as a result of this review is \$18,175.13 in FFP. The State also must identify and repay any ineligible payments that occurred for the error and non-error cases subsequent to the PUR. No

future claims should be submitted on these cases until it is determined that all eligibility requirements are met.

Next Steps

As part of the State's ongoing efforts to improve its title IV-E foster care eligibility determination process, CB recommends that Arizona examine identified program deficiencies and develop measurable, sustainable strategies that target the root cause of problems hindering the State from operating an accurate foster care eligibility program. Appropriate corrective action should be taken in instances of noncompliance with Federal laws and regulations. The CB Region IX staff is available to assist the State in identifying and obtaining technical assistance available to facilitate the State's strategies for corrective action.